

The complaint

Mr S complains that HSBC UK Bank Plc trading as first direct declined to refund disputed transactions that were made from his account.

What happened

On 1 November 2024, Mr S says he received a knock at his door from a person known to him, telling him she was in trouble and needed help. He told first direct he gave her his debit card to pay for her taxi as he didn't have any cash, but when she didn't return, he checked his account and discovered an Automated Teller Machine (ATM) withdrawal had been made without his knowledge or permission.

Mr S says he contacted first direct to report the withdrawal as unrecognised, and the bank told him about two further transactions that had been made, which he also reported as unrecognised. He asked first direct to refund the disputed transactions, totalling £388.80, but it didn't believe it was liable for his loss because there was no explanation as to how this third party could've obtained Mr S' Personal Identification Number (PIN).

Mr S raised a complaint. In response, first direct said:

- Mr S had willingly given his debit card to another person.
- The transactions were also PIN verified and at one point during a telephone call, Mr S explained the person also knew this.
- The decision to decline Mr S' fraud claim was in line with its policies.

Mr S referred his complaint to our service where it was considered by one of our investigators. She didn't believe first direct had acted unfairly when it declined to refund the £388.80 to Mr S, as she couldn't see any plausible explanation as to how the third party would've had knowledge of his PIN.

Mr S remained unhappy. In response to our investigator, he said he felt strongly that the evidence he'd already provided, including an ongoing Police investigation, supported his claim that the transactions in dispute were unauthorised. He also reiterated his health issues and explained how both his physical and mental health had worsened as a result of first direct's involvement with his fraud claim.

As no agreement could be reached, the complaint has been passed to me to decide.

What I've decided – and why

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I'm sorry to disappoint Mr S, but I've reached the same outcome to our investigator, for similar reasons.

The Payment Services Regulations 2017 (PSRs) say, in summary, that a payment service provider should generally refund a transaction that comes out of one of their consumer's accounts that they didn't authorise. There are limited exceptions to this, such as when the consumer has breached their obligations to keep their security credentials secure either intentionally, or by being grossly negligent with them.

In this case, it's important to note that Mr S claims that the version of events he gave to first direct was in a brief moment of confusion, and that actually, he didn't give this person his card to pay for a taxi at all. Instead, he's told our investigator that she must have taken his card from his wallet, as at no point did he give her permission to take his card.

Because of this significant change in Mr S' testimony, I've listened to the call he had with first direct on 1 November 2024, very shortly after he discovered the disputed ATM withdrawal. Whilst I appreciate Mr S says he was confused, I find he came across as very clear and confident in what he was saying during the call. He gave a detailed explanation of how this person came to be in possession of his card, and said this had all happened within the last 30-60 minutes.

On the balance of probabilities, I find this first explanation that Mr S gave to first direct is likely to be correct. At the time, the events had just happened, and everything was fresh in his mind. I've also considered the possibility of Mr S changing his version of events because he thinks what he said to the bank could impact his fraud claim negatively in some way. But I have to consider all evidence available to me when reaching this decision. And I find it's most likely Mr S did give this person his card to pay for the taxi as he'd initially explained.

But that doesn't explain how she was able to use the card at an ATM with the PIN. Mr S says he'd never disclosed his PIN to this person. Our investigator further questioned if she'd ever been around Mr S when he'd made genuine transactions with his PIN in the past, as he'd told first direct that she's been around him and could've seen him use the PIN before.

But the evidence shows that Mr S changed his PIN on 14 October 2024. He says this was changed to a memorable series of numbers for him, and not any digits from his date of birth. Mr S also says two days after making this change, he only saw the person responsible for the disputed transactions once, before she arrived at his door on 1 November 2024.

With that in mind, I asked first direct to send me any evidence of Mr S using his card with his PIN for genuine transactions between 14 October and 1 November 2024. This was to see if it was possible Mr S had been observed using his PIN by this person, which would explain how she'd obtained it to use in the ATM on 1 November 2024. But, the only transaction that required the use of the PIN was on 14 October 2024 (when Mr S says he wasn't with this person). The bank says everything else was contactless. So I can't see how this third party could've gained knowledge of Mr S' PIN, unless she'd guessed it, or if he'd told it to her. However because the new PIN was used, unless Mr S had told her he'd changed the PIN, if she had at some point observed him using it in the past, I would've expected her to try that PIN first before the newly changed PIN. But that didn't happen. So, because this person had full knowledge of Mr S' changed PIN, I think it's more likely than not that Mr S told her what the new number was. From the evidence available, I can't see any other reasonable explanation as how she came to know it.

Because I've decided that Mr S most likely *did* give this person his card to pay for her taxi as he first told the first direct advisor, and because I've also decided he most likely disclosed his PIN to her too, I've thought about what this means to the outcome of this complaint. As I've explained above, the relevant regulations say the bank isn't responsible for a refund for disputed transactions when the consumer has breached their obligations to keep their security credentials secure either intentionally, or by being grossly negligent.

Here, whilst I don't find Mr S to have acted with gross negligence, I do find that first direct is entitled to hold him liable for the disputed transactions because he intentionally failed in his obligations to keep his security details safe. And in the circumstances of this case, this includes the contactless transactions. Because, whilst these didn't require the use of the PIN, had the bank asked for further authorisation, I'm satisfied the transactions would've still been processed as this person had knowledge of Mr S' PIN. And whilst I appreciate Mr S has said something else happened, I must base this decision based on all of the available evidence and what I consider to be the most likely explanation in the circumstances.

I realise Mr S has reported this matter to the Police and tells us this person has been seen on CCTV using his card. It appears to be accepted by all that Mr S didn't make these transactions himself. However, my decision is focused on whether first direct is entitled to hold him liable for the transactions he's disputed, not if a crime has been committed. And here, I don't require first direct to refund the £388.80 to Mr S for the reasons I've already explained.

I was sorry to hear about the impact this situation has had on Mr S. I'd like to thank him for telling us about his health condition and the ongoing issues he's experienced because of these disputed transactions. This can't have been an easy time for him, and I appreciate the financial implications that this matter has caused to him too. I appreciate Mr S believes first direct failed to take his vulnerabilities into account and offer additional support when it declined to refund the disputed transactions. But it seems first direct wasn't aware of Mr S' vulnerabilities until he made the fraud claim, and the bank's customer care team contacted him to ask if there was anything else the bank could do to support him and to keep his money safe. I've listened to this call, and I'm pleased to hear that the bank wanted to explore Mr S' circumstances and explained services that it offers that Mr S was unaware of, such as delivering cash to him if needed. It also asked if Mr S would benefit from it referring him to external services or if he needed to speak with any charities about his wellbeing, but he didn't want to go down this route. It also asked if Mr S if it would be helpful if it restricted his ATM withdrawal limit to £100. But he requested for this to be £200, which was put in place. It also gave Mr S its customer care telephone number and explained he can contact them at any time if needed. I appreciate Mr S feels differently, but from listening to this call, I find first direct did everything it could to explore how it could help him in view of his vulnerabilities.

Having considered all of the available evidence for this complaint, I know this is not the outcome that Mr S was hoping for, but I don't require first direct to do anything more here.

My final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 9 December 2025.

Lorna Wall
Ombudsman